IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3111 OF 2006

Mr.Anil S. Aher .... Petitioner
V/s
State of Maharashtra & Ors.... ... ... Respondents.

Mr.A.Y.Sakhare, Sr. Adv. With K.R.Jagdale For the petitioner.

Mr.P.I.Khemani, AGP for Respondent Nos. 1 and 2.

Mr.Vijay Patil for respondent No.3.

CORAM: V.G. PALSHIKAR
AND
V.R.KINGAONKAR, JJ.

03.05.2006.

PC:

By this petition the petitioner challenges the order passed by Maharashtra Administrative Tribunal rejecting the Original Application of the petitioner challenging his transfer from Nashik to Bombay on the ground mentioned in the application. The order of the Tribunal is well reasoned speaking order. There is no jurisdictional error committed by the Tribunal.

2. However it is canvassed before us that the order of transfer of the petitioner impugned in this petition is bad in law for the following three contentions:

i) Circulars issued by the Government in relation to transfers are not followed;

ii) The order is vitiated by mala fide as the transfer of the

petitioner is made to accommodate respondent No.3 who had political hold for seeking restoration of his posting to Nashik. In this submission reliance was placed on 40 communications addressed by different political personnel requesting for transfer on the grounds mentioned in those documents. Most of the requests are for taking care of the family members of the incumbent for whom recommendation was given;

iii) In order to accommodate respondent No.3 this transfer order was issued. It is therefore in colourable exercise of power.

3. We are unable to accept any of the submissions. Circulars or guidelines issued by the State Government are for its proper administration and to govern the policy of transfers. These are not mandatory directions issued by the State infraction of which will be an illegality. By and large, these circulars are followed and in the present case they are not followed because respondent No.3 was seeking transfer back to Nashik as he was required to nurse his ailing parents which reason appealed to the concerned political persons and therefore the impugned order was passed. The reason given by the petitioner for challenging the order of his own transfer also pertains to his family. He wants to stay in Nashik so that his children can be better equipped by competitive examination which can ensue. These grounds for challenging the transfers are usual. As a matter of course several Government servants know and must know that transfer is an incident of Government service and is required to face the same as and when

ordered. The fact that his children' seducation will be affected is also a known fact. We cannot however accept the reason in the present case for the simple reason that the petitioner is transferred from Nashik to Bombay which is larger field in the matter of education where competitive education can be better obtained. In fact this would be helpful to the children of the petitioner.

4. Merely because the impugned order is passed at the instance of some Minister or Member of Legislative Assembly it cannot be said with all necessity that it is a colourable exercise of power. Transfer being the incident of service, there being no error either of law or fact pointed out to us in the order impugned this order of Maharashtra Administrative Tribunal, we see no reason to interfere. Petition dismissed.

3.5.06